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In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Transport Rate Structure)	CC Docket No. 96-263
and Pricing)	

COMMENTS OF

AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION
("ACTA")

Initial Comments: January 29, 1997

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EXECUTIVE SUMMARY

America's Carriers Telecommunication Association ("ACTA"), a trade association of interexchange telecommunications companies, submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released December 24, 1996 in the matter of Access Charge Reform.

ACTA submits that the Commission must approach the process of access charge reform through reform of each part (32, 64, 36, 69, and 61) of the Commission's rules which contribute to the formulation of access charges. Furthermore, ACTA holds that the Commission must evaluate the decision reached at the Eight Circuit Court of Appeals before setting in motion the changes contemplated within this NPRM.

The scope of this NRPM is extremely broad. Consequently, the scope of ACTA's Comments are equally broad. ACTA encourages the Commission to adopt a capacity based charge for the Carrier Common Line ("CCL"), and promotes removal of the Subscriber Line Charge ("SLC") for multi-line business and for second and additional residential lines. ACTA also believes the Commission should embrace SLC assessment based on copper wire pairs, and not on derived channels.

For treatment of the local switching element, ACTA suggests that the Commission remove all Non-Traffic Sensitive ("NTS") charges to be recovered through a flat charge assessed against types and quantity of trunks. The remaining traffic sensitive charges should be recovered in a manner similar to the minute of use charge in place today.

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ACTA submits that the transport structure should remain a flat charge for entrance facilities and direct-trunked transport. ACTA also supports the continuation of the Interim tandem switched transport structure with additional reduction taken through revision to the Tandem Interconnection Charge ("TIC"). For the TIC, ACTA maintains that the Commission should quantify and correct all identifiable cost misallocations and other practices that result in costs being recovered through the TIC, and introduce a prescriptive reduction of the TIC over a specified time period, such as five years.

ACTA is a strong proponent of a prescriptive approach to access reform. The Commission should prescribe an immediate reinitialization of the Price Cap Indices ("PCIs") based on a target rate of return, followed by PCI reinitialization to Total Service Long Run Incremental Cost levels once the data has been compiled.

Finally, ACTA contends that the Commission should adopt a radically *new* access charge regime that reduces access charges to true cost wherein all users of the network bear a proportionate share of rationally calculated access costs. Accordingly, LECs should be required to access interstate access charges on ESPs and ISPs under this new regime.

I. INTRODUCTION¹

A. Overview

1. In its opening Comments of the NPRM, the Commission states that the intent of Congress, when passing the Telecommunications Act of 1996 ("TA96"),² was to "establish a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.³ The Commission further asserts that this NPRM is the third in a trilogy of actions that are intended to foster competition as mandated by TA96.⁴ ACTA supports and applauds this goal and urges the Commission to use the opportunity presented by TA96 to revise and amend the current system of access charges which unduly subsidizes monopoly incumbent local exchange carriers ("ILECs") and prevents the emergence of real competition in the marketplace.

2. For the Commission to meet this challenge successfully, access charge reform should begin at the beginning. Yet, perhaps because of the statutorily imposed deadlines of TA96, the Commission has not done so. In the NPRM, the Commission reveals that it will not initiate work on Separations (Part 36) reform until later this year.⁵ This delay in addressing separations concerns

¹ These Comments follow the sectional organization of the Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry in CC Docket No. 96-292, CC Docket No. 94-1, CC Docket No. 91-213, CC Docket No. 96-262 (RED. Dec. 24, 1996) ("NPRM").

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§ 151 *et. seq.*

³ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess 1 (1996) ("*Joint Explanatory Statement*").

⁴ NPRM at ¶ 1.

⁵ NPRM at ¶ 6.

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ACTA because changes to such interrelated rules contained in other parts of the Commission's regulations will have dramatic effects upon rates and IXC cost structures. Lasting and sound access charge reform therefore should have been sequenced as follows: first reform of Part 32, followed by reform of Parts 64, 36, 69 and finally 61. This sequencing of reform is, in ACTA's judgment, the surest means by which to achieve true reform because it will ensure that ILEC compliance with the requirements of the access charge regime is achieved.

3. Compounding the concerns for the proper sequencing of the watershed changes to the cost structure of the public switched network is the Commission's decision also to defer its initiation of a separate proceeding to undertake a comprehensive review of its depreciation rules.⁶ Again, such a delay causes concern because this NPRM addresses issues related to under-depreciated costs.⁷ By bifurcating its reform endeavors on what are inherently interrelated cost issues, the Commission's assault on the inefficiencies, misallocation, and cross subsidies that are buried in today's access rates will constitute, at most, a topical remedy rather than the radical surgery needed to cure the over-inflated and diseased access regime and its chokehold over competition.

II. ACCESS REFORM FOR THE INCUMBENT LOCAL EXCHANGE CARRIERS

A. Application of Reforms to Price Cap Carriers and Non-Price Cap Carriers

4. Although access reform should include all LECs, ACTA recognizes the difficulty inherent in concurrent reform of both Price Cap LECs and Rate of Return ("ROR") LECs. However, ACTA

⁶ *NPRM* at ¶ 340.

⁷ *NPRM* at ¶¶ 249-259.

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submits that structural changes to the Carrier Common Line charge ("CCL") and the Subscriber Line Charge ("SLC") should be adopted by all LECs as a result of this proceeding and not delayed until the Commission undertakes a comprehensive review of ROR LEC regulations. It is apparent that the decision for treatment of the CCL charges and SLC will eventually apply to all LECs. It then follows that allowing ROR LECs to continue using current CCL and SLC rate structures after a decision has been made by the Commission will only prolong the period over which the ROR LECs receive subsidies that the Commission has already deemed to be economically inefficient.⁸

B. Applicability of Part 69 to Unbundled Elements

5. The Commission tentatively concludes that unbundled elements should be excluded from the Part 69 access regime.⁹ ACTA agrees with this conclusion because the current Part 69 access regime is an inefficient monopoly protection mechanism which must be recreated in its entirety. Were it possible, the Commission should delay its action on access charges until the Eighth Circuit has decided the appeal of the Commission's Interconnection Order.¹⁰ The Commission itself asserts "the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance should converge."¹¹ From this ACTA concludes that access charges cannot be brought down to cost without consideration given to unbundled element pricing. This, in turn, means that the emergence of competition in local markets is inextricably

⁸ NPRM at ¶ 58.

⁹ NPRM at ¶ 54.

¹⁰ *Iowa Utilities Board, et al. v. FCC*, No. 96-3321 (8th Cir. Argued January 17, 1997).

¹¹ NPRM at ¶ 9.

interwoven with the availability of unbundled network elements. It is critical for the Commission to strike a careful and considered balance between access charges and the pricing of unbundled elements because such a balance affects the opportunity for, and/or necessity of, ILEC bypass. Until the Commission's authority to act in this area is clarified and confirmed, uncertainty will reign supreme and the opportunity for competition will be weakened. The unenviable task to be undertaken then is to act as quickly as possible once the Eighth Circuit rules and to readdress any decisions made prior thereto as a result of the Congressionally imposed deadlines under TA96. ACTA urges the Commission expressly to qualify any decisions, rules and/or policies it deems compelled to make as interim in nature pending action by the Eighth Circuit.

III. RATE STRUCTURE MODIFICATIONS

A. Overview

6. In this section, the Commission states its goals and proposals for rate structure rule changes for common line, local switching, and transport. Comment is also sought on a number of proposals for phasing out the transport interconnection charge ("TIC") and for establishing rate structure rules for signaling services.

B. Common Line

1. Background

7. It is ACTA's position that the Commission should: 1) adopt a capacity charge structure for the non-traffic sensitive ("NTS") portion of the CCL charge; 2) allow for an increase to the SLC on multi-line business lines and second residential lines; and 3) move away from integrated services

digital network ("ISDN") SLCs based on derived channels.

2. Alternative Methods of Recovery of the CCL Portion of Subscriber Loop Costs

8. The Joint Board in its Recommended Decision noted that CCL NTS loop costs should be recovered in a manner that is consistent with the manner in which these costs are incurred.¹² Of the five proposed revisions to the current CCL structure, only a capacity charge based on the number and type of trunks purchased from the ILEC will meet this objective and allow for equitable and verifiable practices, continued growth of competition, and efficient utilization of ILEC networks. A capacity charge, as outlined in the NPRM,¹³ removes the subsidies inherent in the per minute charge and provides incentive for IXCs to achieve higher levels of utilization over purchased facilities. Through reduction and optimization of under-utilized facilities, IXCs will have the ability to reduce access charges and become more competitive, and the ILEC networks will become more efficient.

9. If the Commission elects to move the CCL NTS charges towards a port charge, ACTA maintains that the structure should be based on quantity and type of connection. ILEC charges should be derived in a fully fractionalized basis to render competitive neutrality. If this charge is intended to recover the local loop charge, the Commission should not penalize carriers with small market share by burdening them with proportionally larger CCL NTS charges.

¹² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (rel. Nov. 8, 1996) at ¶ 775. (*"Joint Board Recommended Decision"*).

¹³ NPRM at ¶ 61.

10. ACTA strongly urges the Commission to dismiss the notions of either a flat per-line charge based on a customer's interexchange carrier ("IXC") interLATA PIC, or a bulk billing option based on an IXC percentage of interstate minutes of use ("MOU"s). As the Commission itself points out, a flat per-line charge presents potential problems when customers "dial-around" the PIC.¹⁴ In fact, this type of pricing structure encourages carriers to establish and promote "dial around" alternatives as a means to reduce access costs. This scenario leaves the PIC'd carrier footing the per-line charge but with all revenue related to the line diverted to a competitor. Clearly this application skews the Commission's intention of equal and proportionate distribution of charges among all carriers and could most negatively impact the financial structure of ACTA's members.

11. Additionally, a per-line charge relies heavily upon ILEC legacy system support for accurate billing. To date, no ILEC has proven they have a carrier access billing system ("CABs") nimble enough to be up to this task.

12. A bulk billing option based on an IXC's percentage of interstate MOUs is a seemingly equitable application but represents considerable operational and administrative problems. IXCs would need to be privy to the ILECs' and other IXCs' confidential financial data to audit those charges. IXCs would need access to each others' MOUs and dispute data. Every month, IXCs would be forced to reevaluate all previous monthly billing to ensure that the market share percentage was adjusted as a result of any resolved MOU dispute between the ILEC and any other IXC. Compilation of this information would be both time consuming and costly, with no guarantee of

¹⁴ *NPRM* at ¶ 60.

accuracy. This structure also demands a level of flexibility and functionality from ILEC billing systems that does not exist.

3. Alternative Methods of Recovery of SLC Portion of Subscriber Loop Costs

13. Removal of the cap on the SLC for multi-line business customers and on second and additional residential lines clearly promotes the Commission's goal of assigning cost to the cost causers. However, ACTA encourages the Commission to establish a clear and identifiable billing standard for this increase on end user bills to avoid consumer confusion. These charges need to be separate from both long distance charges and from "access," which the general public relates to IXCs.

4. Assessment of SLCs on Derived Channels

14. ACTA supports the assessment of SLC based on pairs of copper wires and not based on derived channels. The ability of an entity to utilize more advanced technology effectively is a deserved competitive advantage. Moreover, by supporting derived channel charges, the Commission is acting contrary to its stated goal of fostering competition and the emergence of new technologies.

C. Local Switching

1. Non-Traffic Sensitive Costs

15. ACTA advocates segregation of the NTS portion of the local switching element from the traffic sensitive portion of the local switching element. However, as with the treatment of the CCL charge, the Commission's goal must be the formulation of rules that do not unfairly discriminate against the nation's small IXCs. To this end, ACTA promotes a flat rate charge based

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on the quantity and type of trunks served by the ILEC switch. This charge must place a proportionate charge on all users and not allow for volume pricing mechanisms, which are intrinsically partial toward the large IXCs.

2. Traffic Sensitive Costs

16. Once all NTS components of the local switching element have been removed, the remaining costs should be recovered through a per minute of use charge. This charge should be built similarly to its current structure without the introduction of peak and off-peak pricing. Establishing a peak and off-peak pricing structure is flawed for two reasons. First, as stated within the NPRM, it is difficult to accurately determine peak periods.¹⁵ The data necessary to derive peak period time frames is partially subjective and will vary widely based on both foreseeable seasonal and cyclical trends, as well as incidental traffic spiking. Second, there are significant practical problems related to ILEC CABs limitations that will not permit the ILECs to provide all billing information necessary for verification of these charges.

17. If the Commission elects to create a per call set-up fee, it should be based exclusively upon completed calls. Levying a per call charge on incomplete call attempts is akin to setting out a welcome mat for unscrupulous entities that may engage in fraud and duplicity. It would become a profitable venture to engage in the generation of incomplete calls on lines PIC'd to a competitor.

18. At the same time, ACTA concedes that call set-up costs related to incomplete calls exist. One possible remedy for this cost recovery would be to determine a multiple based on statistical data

¹⁵ NPRM at ¶ 77-78.

pertaining to incomplete calls. This multiple could then be assessed against completed call set-up charges. Although ACTA's proposal does not close the door on the possibility of fraud, it would significantly reduce the risk. This type of structure would also require access to ILEC and IXC records pertaining to incomplete calls for verification.

19. It is ACTA's position that there should be no pricing differentiation made between direct and tandem routed local switching charges. The Commission should not engage in the creation of rules that will unduly tax the smaller IXCs who traditionally have and will remain more dependent on tandem routing.¹⁶ The ILEC cost for local switching does not vary based upon switching a call to a direct trunk or to a tandem-bound trunk. Additionally, all incremental cost related to the tandem are addressed as part of the Tandem-Switched Transport Services and the TIC, and are not part of local switching.

D. Transport

1. Background

20. ACTA agrees with the Commission's proposal to apply any adopted rules relating to the transport rate structure of the TIC to all ILECs. ACTA also concurs with the Commission's division of the transport rate structure into three parts: (1) charges for entrance facilities; (2) charges for direct-trunked transport service; and (3) charges for tandem-switched transport service.¹⁷

¹⁶ Not only are smaller IXCs more dependent on tandem routing, at times they may be further penalized by the fact that large carriers' overflow traffic during particularly busy hours sometimes jams tandem switches as well. Thus, the traffic most likely to be impacted by such congestion will be the smaller carriers' traffic.

¹⁷ *NPRM* at ¶ 84.

2. Entrance Facility and Direct-Trunked Transport Services

21. The Commission tentatively concludes that the transport rate structures rules should mandate flat-rated charges for entrance facility and direct trunked transport.¹⁸ The Commission further questions if it should allow pricing differentiation depending upon who has channel facility assignment (CFA) control.¹⁹

22. ACTA agrees with the Commission's conclusion that entrance facility and direct trunked transport should remain flat rates, but ACTA is gravely concerned that the Commission has given even a modicum of credibility to the ILECs' assertion that there should be pricing differentiation based on CFA control. The purchase of an ILEC circuit is a simple business transaction. Through that purchase, IXCs should be able to select where their purchase resides. This is an issue of inventory, and the ILECs' inability to maintain accurate records should not translate into a bogus premium charge to the IXCs that are forced to purchase the ILECs' bottlenecked monopoly services.

3. Tandem-Switched Transport Services

a. Rate Structure

23. Given the massive optimization and network re-grooming effort that was required by the First Transport Order (LTR)²⁰ in 1994, it is discouraging that the Commission once again is mandating

¹⁸ *NPRM* at ¶ 87.

¹⁹ *NPRM* at ¶ 87.

²⁰ Transport Rate Structure and Pricing, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992) (*First Transport Order*); recon. 8 FCC Rcd 5370 (1993) (*First Transport Reconsideration Order*); further recon. 8 FCC Rcd 6233 (1993) (*Second Transport Reconsideration Order*); further recon. 10 FCC Rcd 3030 (1994) (*Third Transport Reconsideration Order*); further recon. 10 FCC Rcd 12979 (1995) (*Fourth Transport Reconsideration Order*). (All collectively referred to as "LTR").

sweeping changes to the tandem switched transport structure. At a minimum, any significant change made to the tandem switched transport structure should be tempered with a requirement for the ILECs to provide non-recurring charge waivers within a fresh-look "window" of adjustment.

24. In ACTA's opinion, the ideal structure for tandem switched transport is a continuation of the interim structure with one change: the Commission should require ILECs to provide both structures in combination between a single serving wire center and end office combination. Under current tariffs, most ILECs will provide either a unitary or a partitioned structure within a given serving wire center and end office combination. The reason generally stated for this division is usually related to either administrative ease, or to CABs limitations.

25. Moreover, the current mileage calculations should remain the same. IXC's have absolutely no control over ILEC tandem placement and have no option other than to transverse the network designed by the ILEC. As such, IXC's should not be penalized for tandem location selections made exclusively by the ILECs to benefit their local operations, but which may well be ineffecient and non-optimal for interexchange operations.

26. For the reasons stated in these Comments in Section III.C.2. and III.D.2., ACTA opposes both the development of peak and off-peak pricing structures and a pricing differential based on CFA control.

b. Rate Level

27. It is ACTA's opinion that reallocation of the TIC (discussed in section III.E. below) will make significant contributions toward correcting the overhead cost allocation imbalance between

transport rate elements. ACTA supports further TIC rate level adjustments to be made in the context of the Commission's Prescriptive Approach to Access Reform and as outlined in these Comments under section VI.

E. Transport Interconnection Charge

1. Background

28. The Commission's stated objective is to phase out the transport interconnection charge ("TIC") in a manner that fosters competition and responds to the court's remand in *CompTel v. FCC*.²¹ The TIC phase out is also related to three other issues: (1) establishing a universal service support mechanism; (2) adoption of either the market-based or prescriptive approach to access charge reform; and (3) the issue which surrounds allowing ILECs to recover some embedded costs for some period in a competitively neutral manner. Each of these three issues has contributed costs that are included in the TIC.²² Consequently, resolution of these issues will also serve to reduce the TIC.

29. The Commission proposes four possible methods for addressing the TIC. Option one is to give the ILECs significant pricing flexibility and allow market forces to discipline the recovery of the TIC, either alone, or in conjunction with a phase-out of the TIC. Second, the Commission could mandate that ILECs quantify and correct all identifiable cost misallocations and other practices that result in costs being recovered through the TIC. The third option would be a combination of

²¹ 87 F.3d 522 (D.C. Cir. 1996); *NPRM* at ¶ 98.

²² *NPRM* at ¶ 98.

the preceding two methods. And finally, the Commission suggests the ultimate termination of the TIC over a specified time period.²³

2. Possible Sources of Costs in the TIC

30. The Commission summarizes several explanations pertaining to the nature of costs embedded in the TIC and divides these explanations into two general categories: those costs included in the TIC as a result of transport rate setting choices, and costs included in the TIC which are related to potential cost misallocations.²⁴

a. Transport Rate Setting

31. The Commission suggests the following transport rate setting practices as sources of embedded TIC costs: (1) tandem switching and SS7; (2) tandem switched transport rate setting; (3) host-remote trunking rate; (4) multiplexing costs; and (5) direct trunked transport rate. ACTA believes that the costs relating to tandem switching currently being recovered by the TIC will be correctly reassigned under the Commission proposals for treatment of the SS7 rate structure as discussed in this NPRM.²⁵ All other reasons cited for costs in the TIC arise from LEC inefficiencies.

32. As stated in section III. D. 3. a of these Comments, it is outside of the IXC's control where ILECs choose to place tandem switches. Similarly, the arguments for cost inclusion related to host-remote trunking and multiplexing costs are founded on irrelevant facts. The argument that

²³ *NPRM* at ¶ 99.

²⁴ *NPRM* at ¶ 101.

²⁵ *NPRM* at III.F.

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ILEC costs related to multiplexing are higher than revenue recovered through transport rates is at best fanciful.²⁶ The ILECs assert that these costs are higher because they are using outdated analog electronic switches. Excess costs related to the ILECs' failure to update equipment is not a cost that can reasonably be assigned to IXC's.

b. Possible Cost Misallocations

33. ACTA agrees with the ILEC position that there are costs which have been misallocated to the TIC due to problems with separations. As indicated at the outset of these Comments, it is ACTA's position that the Commission should have started its reform efforts with the reform of Part 32, followed by Parts 64, 36, 69 and finally 61.

3. Possible Revision to the TIC

34. ACTA agrees with the Commission statement that the "development of a competitive access market will be distorted by the assessment of the TIC as a surcharge on local switching."²⁷ To correct this situation and ensure that costs are recovered in the manner in which they are incurred, ACTA urges the Commission to set about TIC revision in the following manner: (1) quantify and correct all identifiable cost misallocations and other practices that result in costs being recovered through the TIC; and (2) prescriptive reduction of the TIC over a specified time period, such as five years. This approach would grant an immediate reduction of the TIC and reallocation of costs that should appropriately be recovered. Furthermore, a date certain phase down would provide smaller

²⁶ *NPRM* at ¶ 106.

²⁷ *NPRM* at ¶ 112.

IXCs with the time necessary to regroom and optimize where possible. ACTA promotes reduction of the TIC rather than its elimination. Complete termination of the TIC with recovery of all tandem costs borne primarily by heavy tandem users will have a debilitating effect upon smaller IXCs, and would be a serious detriment to the evolving competitive arena that the Commission seeks to nurture. Additionally, as stated within this NPRM,²⁸ a significant portion of the costs associated with the tandem exist due to the provisioning of excess facilities to handle overflow from the larger and mainly direct routed IXCs. It is reasonable then to assert that these large IXCs, who only deploy the tandem on a casual basis, are proportionally larger cost causers and should be responsible for supporting the tandem at a rate greater than pure incremental cost.

F. SS7 Signalling

35. ACTA reserves Comment on the structure of SS7 signalling charges.

G. New Technologies

36. ACTA reserves Comment on the structure of charges as they relate to new technologies.

IV. Approaches to Access Reform and Deregulation

A. Different Approaches to Access Reform

37. The Commission suggests in the NPRM two distinctly different possible approaches to access charge reform. The names given to these approaches by the Commission are: market-based approach, and prescriptive approach.

²⁸ NPRM at ¶ 77.

B. The Goal -- Deregulation in the Presence of Substantial Competition

1. Objectives

38. The Commission's stated goal in its approach to access reform and deregulation is to adopt revisions to Part 69 rules that will "foster competition for these interstate access services and eventually enable marketplace forces to eliminate the need for price regulation of these services."²⁹ ACTA maintains that this goal can only be met, and the public interest served, if the Commission dictates non-arbitrary guidelines to establish the presence of competition.

2. Competitive Factors

39. The Commission offers a series of tests to determine if competition for a particular service exists. The four factors offered are: demand responsiveness, supply responsiveness, market share, pricing of services under price cap regulation, and other factors.³⁰ ACTA urges the Commission to consider all four factors to determine true existence of competition for a particular interstate access service. In order of import, the Commission should consider demand responsiveness, supply responsiveness, pricing of services under price cap regulation, and market share. When examining pricing of services under price cap regulation, ACTA encourages the Commission to examine the documented acts and pricing policies of the ILEC's over the history of Price Caps. Consideration of only the most recent filings, which may be adjusted for this particular competitive factor, would skew the Commission's ability to clearly see the ILEC corporate policies

²⁹ *NPRM* at ¶ 140.

³⁰ *NPRM* at ¶¶ 156-160.

for what they have been and still are today: monopoly protectionism pricing.

V. Market-Based Approach to Access Reform

A. Introduction

40. The market-based approach is a two-phased approach. Under this proposal, the Commission would implement regulatory reforms as ILECs demonstrate that their local markets have achieved pre-defined, specific transition points, or "competitive triggers."

B. Phase One - Potential Competition

41. Phase one requires the existence of potential competition.

1. Trigger and Geographic Scope

42. It is ACTA's recommendation that the Commission reject the market-based model in favor of a more prescriptive approach toward access reform.³¹ To date, there has not been a shred of evidence that would lead ACTA to believe that an ILEC would accept the responsibility placed upon it by this approach to foster the continued development of competition in the telecommunications industry.³² However, if the Commission elects to reform and deregulate in a manner consistent with a market based approach, it is of vital importance that **ALL** of the following conditions exist to trigger Phase One: (1) unbundled network element prices based on geographically deaveraged TELRIC, plus a reasonable allocation of common cost (which as defined by ILECs is

³¹ The FCC's consideration of a market-based approach appears whimsical at best and directly contradictory at worst. The FCC will have a difficult time justifying this approach in light of its express observations in the Interconnection Order recognizing the endemic anti-competition bias and practices of the monopoly/ILECs. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 (released August 8, 1996), ¶¶ 10, 41, 55.

³² An observation with which the Commission agrees. *op.cit.supra* n.31.

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certain to be an oxymoron); (2) transport and termination on the LEC network to be available at the ILEC's additional cost; (3) wholesale prices for retail services based on reasonable avoidable costs; (4) network elements and services capable of being provisioned rapidly and consistent with a significant level of demand; (5) dialing parity provided by the ILEC to competitors; (6) number portability provided by the ILEC to competitors; (7) access to ILEC right-of-way provided to competitors; and (8) open and non-discriminatory network standards and protocols put into place.

Furthermore, "objective evidence" as requested by the Commission³³ must be supported by the purchasers and competitors of these services. For example, the fact that an ILEC may have a sufficient provisioning system is irrelevant if competitors and/or purchasers have not been provided with the necessary time or documentation to develop an interface to that system.

43. Furthermore, if a phase one is achieved by an ILEC, ACTA urges the Commission to limit the flexibility granted to that ILEC: (1) lifting the prohibition against geographic deaveraging within a study area; (2) removing the ban on term discounts for interstate access services provided there is sufficient cost support documentation.

44. It is ACTA's contention that ILECs should not be allowed to offer volume discounts. Volume discounts, by their very nature, are discriminatory. These discount places a larger proportional charge for equal service upon the small IXC's who cannot qualify for the plans. This would represent an unfair Commission-granted competitive advantage for Tier I IXC's and ILECs when they enter the long distance arena. ACTA also discourages removing the ban on contract tariffs and RFP's by ILECs. These tariffs are discriminatory, favor large customers, and generally

³³ *NPRM* at ¶ 177.

incorporate pricing plans that contain both volume and growth discount provisions.

C. Phase Two - Actual Competition

45. Under the Commission's market-based approach, phase two would be met when an actual competitive presence has developed in the marketplace. For an ILEC to demonstrate that phase two has been achieved for a particular service or within a given area, ACTA advocates that, at a minimum, the following conditions must exist: (1) demonstrated presence of competition as determined by the competitive factor discussed in the Comments at V.A.2.; (2) full implementation of competitively neutral universal service support mechanisms; and (3) credible and timely enforcement of pro-competitive rules. ACTA maintains that the measure of competition should be based upon the same factors used to determine substantial competition, with the degree of responsiveness being the deciding factor between the phases. If an ILEC has met the criteria for phase two, it should enjoy no more than the elimination of some price cap service categories within baskets. Contrary to the Commission's tentative conclusion pertaining to feasibility,³⁴ ACTA would initiate this service category elimination on a service-by-service basis with appropriate adjustments made to the PCI, API, and SBI as necessary. It is ACTA's conviction that all any other deregulation granted to an ILEC at this point would be premature and hinder the development of meaningful competition.

46. ACTA also petitions the Commission to create a mechanism to revoke rights and substantially penalize an ILEC if it no longer fulfills the trigger criteria. The Commission must initiate a new and distinct complaint procedure for transgressions related to the competitive triggers

³⁴ *NPRM* at ¶ 211.

violations, and be ready to take swift and aggressive regulatory action against any ILEC found to be violating the letter or spirit of the Commission's rules.

VI. Prescriptive Approach

A. Introduction

47. The Commission recognizes that some parties do not feel that a market-based approach to reform would be adequate or just for the reform of access. ACTA is one of these parties, and supports a the more equitable prescriptive approach as outlined below.

B. Goal of Prescriptive Access Reform

48. The goal of the prescriptive approach as defined by the Commission is to adopt rules that would drive access rates to economically efficient levels.³⁵ It is ACTA's viewpoint that the Commission's goals can only be achieved through a prescriptive approach to access reform, with identification of and adherence to a pricing system that reflects true Total Service Long Run Incremental Cost ("TSLRIC").

C. Specific Regulatory Requirements

49. The Commission tentatively concludes that "in the event we determine that a market-based approach will not result in the development of efficient competition . . . the goal for prescriptive access reform should focus on interstate access rates based on some form of a TSLRIC pricing method."³⁶ Clearly the designation of pricing based on a TSLRIC methodology is the only means by which interstate access charges will be brought down to cost. While this is theoretically

³⁵ *NPRM* at ¶ 220

³⁶ *NPRM* at ¶ 222.